In the Matter of UNION STOCK YARDS COMPANY *and* AMALGAMATED MEAT CUTTERS AND BUTCHER WORKERS OF NORTH AMERICA, LOCAL NO. 536, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

*Case No. C-814.—Decided October 5, 1939*

*Stock Yards—Interference, Restraint, and Coercion:* questioning of employees by officers of the respondent regarding their union activities on the previous evening; informing an employee that he would have been promoted instead of discharged had he not engaged in union activities—*Discrimination:* discharge of nine employees on day following their attendance of union meeting found discrimination; failure to reemploy extra employee, in absence of sufficient showing as to the respondent's knowledge of employee's union membership, found not discrimination and charge of dismissed—*Reinstatement Ordered:* two employees not previously reinstated—*Back Pay:* awarded.

*Mr. Bernard L. Alpert*, for the Board.

*Mr. Roscoe C. Patterson* and *Mr. Fred A. Moon*, of Springfield, Mo., for the respondent.

*Mr. Wallace Cooper*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon charges duly filed by Amalgamated Meat Cutters and Butcher Workers of North America, Local No. 536, affiliated with the American Federation of Labor, herein called the Amalgamated, the National Labor Relations Board, herein called the Board, by the Acting Regional Director for the Seventeenth Region (Kansas City, Missouri), issued its complaint dated June 10, 1938, against Union Stock Yards Company, Springfield, Missouri, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent and the Amalgamated.

The complaint alleged in substance (1) that on July 15, 1937, the respondent discharged or laid off Arthur Brown, John Icenhower,

J. F. McMillen, Glen Jackson, John C. Crabtree, Frank Brashear, A. J. Marks, and R. H. Cardwell, and failed and refused to reinstate said employees until July 19, 1937, and that on July 15, 1937, it discharged or laid off William Peeler, A. L. Ellis, A. L. Jolliff, and Homer Ellis, and has at all times since failed to reinstate said employees, all because said employees joined and assisted the Amalgamated; and (2) that by laying off or discharging said employees, the respondent interfered with and discouraged membership in a labor organization of its employees' own choosing and particularly the Amalgamated, and has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. On June 20, 1938, the respondent filed an answer containing a general denial of the material allegations of the complaint, an affirmative challenge of the Board's jurisdiction, and affirmative allegations that certain of said employees were never regularly employed by it and that Homer Ellis and William Peeler were discharged for cause.

Pursuant to notice a hearing was held in Springfield, Missouri, on June 20, 21, and 22, 1938, before Peter F. Ward, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all parties. During the course of the hearing, the Trial Examiner, on motion of counsel for the Board, dismissed the complaint in so far as it alleged unfair labor practices with regard to Homer Ellis and R. H. Cardwell, and made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On July 30, 1938, the Trial Examiner filed an Intermediate Report in which he found that the respondent had engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act, and recommended that the respondent be ordered to cease and desist therefrom, reinstate William Peeler and A. L. Ellis with back pay, and make whole Arthur Brown, John Icenhower, J. F. McMillen, Glen Jackson, John C. Crabtree, Frank Brashear, and A. J. Marks for any loss of wages they may have suffered by reason of their lay-off from July 15 to 19, 1937. The Trial Examiner further recommended that the complaint be dismissed in so far as it alleged an unfair labor practice with regard to A. L. Jolliff. Copies of the Intermediate Report were duly served upon the respondent and the Amalgamated. Thereafter, the respondent filed exceptions to the Intermediate Report.

The Board has considered the exceptions to the Intermediate Report filed by the respondent and, except in so far as they are consistent with

the findings, conclusions, and order set forth below, finds them without merit.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

Union Stock Yards Company is a Missouri corporation engaged at Springfield, Missouri, in the operation of a "stock yard" within the definition of that term by the Packers and Stock Yards Act, 42 Stat. 163, and under the supervision of the United States Department of Agriculture. Its operations consist of furnishing for compensation its services and facilities of its stockyard and appurtenances thereto to commission merchants in connection with their business of buying, selling, marketing, feeding, watering, weighing, holding, delivering, and shipping live cattle, calves, sheep, swine, and mules received by them from consignors.

During 1937, 266,752 head of livestock were shipped into the respondent's stock yard from points in six States, including Missouri, and 2,126 carloads of such livestock were reshipped from the respondent's stockyard by interstate railroads to points in 29 States, including Missouri, approximately 61 per cent of said cars being consigned to points outside the State of Missouri.

We find that the operations of the respondent set forth above occur in commerce, within the meaning of Section 2 (6) and (7) of the Act.[1]

### II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Meat Cutters and Butcher Workers of North America, Local No. 536, is a labor organization affiliated with the American Federation of Labor, admitting to membership yard employees of the respondent.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Interference, restraint, and coercion*

During the early part of July 1937 considerable discussion occurred in the respondent's stockyard among certain of its yard employees[2] regarding the advantages to them of belonging to a labor organization. William Peeler took the initiative in these discussions and urged his fellow employees to organize and become members of the Amalgamated.

[1] See *St. Joseph Stock Yards Company* v. *United States*, 298 U. S. 38; *Stafford* v. *Wallace*, 258 U. S. 495; *Matter of St. Joseph Stock Yards Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 159*, 2 N. L. R. B. 39.

[2] The respondent had approximately 28 yard employees throughout this period.

Pursuant to a prior understanding, 12 of the respondent's yard employees [3] met at a cafe near its stockyard on the evening of July 14, 1937, and from there proceeded in a group to attend a meeting of the Amalgamated. Peeler was spokesman for his fellow employees at that meeting and all the employees attending except one [4] joined the Amalgamated on that occasion. The next morning A. L. Jolliff went to the Amalgamated's offices and made application for membership which was accepted on July 21, bringing the total number of the respondent's employees joining the Amalgamated to 12.

The evidence is clear that on July 15, 1937, and prior to the discharge on that date of any of its employees, the respondent knew the names of all employees who had attended the union meeting the previous evening. C. W. Carr, the respondent's manager having the exclusive power of hiring and discharging employees,[5] testified that before noon on July 15, and prior to discharging Peeler, the first employee discharged by the respondent on that date, he knew the names of said employees.[6] The source of Carr's information does not appear in the record, but it does appear that Raymond Kissee, a director of the respondent, subsequently interrogated several employees during the morning of July 15 regarding the meeting. At that time, Kissee asked J. F. McMillen whether he had joined the Union and, according to the testimony of Arthur Brown, asked and secured from Brown the names of the employees who had joined. Kissee's admission that he talked with Brown and two or three other employees about the meeting and his equivocation as to whether he asked Brown the names of the employees (except for Brown himself) who had joined,[7] convince us that Kissee, on the morning of July 15

[3] Including all yard employees named in the complaint, except A. L. Jolliff, and also including Lewey Sturdevant who was not named therein.

[4] Lewey Sturdevant.

[5] Under the terms of his contract with the respondent effective on December 14, 1936, for a period of 2 years.

[6] His testimony is conflicting as to whether he knew at that time that the employees had joined the Amalgamated.

[7] Kissee testified in this regard:

Q. Do you remember the occasion when some of the men out there joined the union?

A. I remember about them talking about it, yes, sir.

Q. Did you see Arthur Brown on the day after that [the union meeting]?

A. Yes, sir, I think it was the day after. I wouldn't be sure about it, but I saw him nearly every day that he worked.

Q. Did you have any conversation with him there about having joined the union?

A. I did . . . We were just talking about, well just general talk about the boys joining the union. We were all teasing one another and talking and going on. I think I talked to 2 or 3 of the boys. I don't know as I asked them if they joined don't know as I did, but we did discuss it and talked about it, quite a bit . . . I didn't criticize them for it, didn't tell them it was a good thing or nothing. We just discussed it in a general way.

Q. Did you ask any of them who had joined the union?

A. No, I don't believe I asked them who joined. I might have asked the Brown boy if he did join, I might have done that. I would not say I did or didn't, I don't remember.

had made detailed inquiry of Brown and other employees as to the meeting and knew the names of some if not all the employees who attended. The respondent's knowledge as to the aforesaid union activities of its employees and its attempt on July 15, 1937, to deter them therefrom, are further shown by a conversation which occurred on July 15, subsequent to Peeler's discharge, between Peeler and C. C. Hamilton, secretary-treasurer of the respondent. Peeler testified regarding this conversation:

> . . . Hamilton said, "Bill, I am sorry you did what you did last night." I said, "What was that Charley." He said "Let those fellows tie a bell on you, collar you and lead you up to that lodge hall." I said "I was in my right mind." He said "Hell, you were right in line for a regular job. You would have been sitting on top of the world."

Hamilton did not deny Peeler's testimony regarding this conversation. He testified, however, that he could not remember all the details thereof but that Peeler said "I didn't take the boys up there" and that, as a joke, he replied to Peeler, "Bill . . . the report is around here that they put a bell on you and paraded you around up there." We find that the conversation occurred as related by Peeler.

On the basis of all the foregoing facts and the entire record, we find that on July 15, 1937, prior to the discharge of any employees on that date, the respondent through Carr, its manager, knew the names of its employees who had attended the meeting of the Amalgamated on the previous evening; that it knew that at least some of them had joined the Amalgamated on that occasion; that for the purpose of discouraging future union activities of these and other employees, the respondent, acting through Hamilton, an officer, and Kissee, a director, interrogated at least three of its employees, namely, Peeler, Brown, and McMillen, regarding their union activities and those of other employees; and that Hamilton made it plain to Peeler that by his discharge he was being punished for his union activities of the previous evening. We accordingly find that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### B. *The discharges on July 15, 1937*

On July 15, 1937, the respondent, knowing the names of its employees who had attended the meeting of the Amalgamated the previous evening, as stated above, discharged all 12 of said employees, including Lewey Sturdevant who had attended the meeting but had

not joined the Amalgamated.[8] Of the respondent's 28 yard employees, these 12 were the only ones discharged and Carr testified that he could furnish no explanation for that fact. The respondent contends that the employees' attendance at the meeting had nothing to do with the discharges and it advances various purported reasons for the discharges. We shall discuss the cases of the individual employees briefly.

*William Peeler* was employed by the respondent from 1929 until his discharge on July 15, 1937, first as a "regular" employee for about 4 years and then as an "extra" employee until his discharge. He reported for work at the respondent's stockyard at 7:30 o'clock in the morning of July 15, but Carr promptly called him from the cattle dock where he was about to commence work and told him to go to the office for his check. Peeler then inquired of Carr as to what he had done to justify his discharge and Carr replied, "You know what you have done. I can't reemploy you till I have a meeting of the Board of Directors." Peeler appeared at the respondent's stockyard on July 16 and during the following week but at no time was he offered reemployment by the respondent, although, as stated below, the respondent's board of directors met on July 17 and apparently authorized Carr to reinstate certain other employees discharged on July 15.

The respondent asserts that Peeler was discharged for frequent drunkenness while on duty, although Carr testified that he had known about Peeler's drinking habits for several years and that he never put Peeler to work when he had been drinking. As indicated below, however, the last incident involving Peeler's drinking occurred over 2 weeks prior to his discharge, and he worked steadily during the interim period.

In February or March 1937 Peeler, while working for the respondent, called the Frisco Railroad's yardmaster on the telephone and subjected him to a vigorous castigation. Peeler had been drinking on this occasion, although it does not appear that he was intoxicated. At about the same time, or shortly thereafter, Carr removed Peeler from the job of loading livestock into trucks leaving the respondent's stockyard. This action was taken because of complaints to Carr by Claud Beck,[9] who was frequently engaged

[8] On July 15, soon after his discharge, Sturdevant pointed out to certain of the commission men in the respondent's stockyard that he had not joined the Amalgamated. That night Carr talked with Sturdevant by telephone and asked him if he wished to return to work at that time, but, due to other plans previously made, Sturdevant decided not to return until July 19. Carr testified that Sturdevant was the only discharged employee notified to return to work prior to July 19.

[9] Carr testified that Beck's complaint about Peeler occurred about July 1, 1937, although he "wouldn't be positive [of the date]." Since Beck testified that this incident occurred 3 or 4 months prior to Peeler's discharge, we conclude that Carr was mistaken in his recollection of this date.

in trucking livestock away from the respondent's stockyard, to the effect that Peeler had been drunk while loading his truck and that he was afraid that Peeler might become injured while working in that condition.[10] We are convinced that Carr attached comparatively little significance to these incidents since he continued to give employment to Peeler. With one exception, Peeler's earnings from work done for the respondent between January 1 and July 15, 1937, exceeded those of the respondent's other 23 extra employees employed during that period. Although there is evidence that Peeler took an occasional drink while engaged in working for the respondent, the only specific evidence of Peeler's intoxication near the time of his discharge is the testimony of T. L. Burwell, president of the respondent, that he saw Peeler intoxicated while working during the latter part of June 1937 and ordered him to go home. Obviously this incident did not affect Peeler's employment status since he was employed 59 hours by the respondent between July 2 and 15, 1937.

On the basis of the foregoing facts and the entire record we find that Peeler reported for work at the respondent's stockyard on the morning of July 15, 1937; that prior thereto the respondent had learned that Peeler had induced certain of its employees to attend a meeting of the Amalgamated on the previous evening and had been their spokesman at said meeting; that upon learning of Peeler's said union activities, the respondent discharged him therefor, as is indicated by the statements, referred to above, subsequently made to Peeler by C. C. Hamilton on July 15, 1937; and that Peeler's drinking habits and occasional drinking while on duty at the respondent's stockyard did not occasion his discharge, as these habits had been well known to the respondent for several years prior to July 15, 1937, and tolerated by it. We find that William Peeler was discharged because of his union activities.

During the 6 months next preceding his discharge on July 15, 1937, Peeler earned the sum of $145.83 from the respondent. From the date of his discharge to the time of the hearing, his only earnings were $26.86 each 2 weeks from W. P. A., commencing January 27, 1938.

*Arthur Brown*, *John Icenhower*, *J. F. McMillen*, *Glen Jackson*, *John C. Crabtree*, *Frank Brashear*, *A. J. Marks*, *R. H. Cardwell*,[11]

[10] Beck's complaint to Carr was motivated by fear that his employer might become liable for any injury sustained by Peeler while engaged in loading its trucks.

[11] Cardwell testified that he was not discharged and the complaint, in so far as it concerned him, was dismissed during the course of the hearing. However, Carr testified that Cardwell was discharged on July 15, 1937, and that it was his recollection that he gave Cardwell a written notice terminating his employment together with a check for wages due him.

*A. L. Ellis*, *Homer Ellis*,[12] and *Lewey Sturdevant*[13] were discharged by the respondent at about 4 p. m. on July 15, 1937,[14] by written notices terminating their employment until further notice. These notices, accompanied by checks in payment of wages due them, were handed to said employees by Carr and Burwell in the respondent's stockyard. Six of these eleven employees were regular[15] and five were extra employees.[16] Prior to July 15, 1937, the respondent in discharging employees had never given either the regular or extra employees written notice that their services would not be needed in the future. This was obviously the situation in the case of the extra employees as they customarily reported to the respondent when they desired employment and each morning the respondent selected from their number those whom it could use that day. Furthermore, it was not customary for the respondent to distribute wage checks on Thursday; it had previously issued them on Friday unless an extra employee asked for his check at an earlier time.

The respondent has furnished no reason for the discharge of Icenhower, Brown, McMillen, Marks, and A. L. Ellis except the closing of its sheep house on July 15, 1937,[17] and in Icenhower's case, the testimony of Carr that he was considering making a nightman of him and laid him off because he wanted to consult the board of directors on the change. This explanation is especially unimpressive in view of Carr's testimony that he had never previously consulted the directors on personnel matters. We are also unable to reconcile the respondent's contention regarding the closing of its sheep house with Carr's testimony that the respondent's business was "something like normal" on July 16, 1937, and that the employees were not "laid-off because business was slack." The tenuousness of Carr's explanations is further shown by the fact that Carr employed two new extra employees on Friday, July 16, 1937, whereas the work in the respondent's stockyard over Friday and Saturday is normally much slower than during the earlier part of each week. Also, no material change in employment occurred during the 2 months' period immediately following the close of the sheep season of either 1936 or 1937. Moreover, Icenhower had been a regular employee for about a year prior to his discharge and had other duties in the respondent's stockyard aside from his duties in the sheep house.

[12] Homer Ellis did not testify and the complaint in so far as it concerned him was dismissed. Respondent's pay-roll records, however, show that Ellis ceased to be employed by the respondent on July 15, 1937.

[13] See footnote 8 above.

[14] This date fell on Thursday, the last day of the respondent's fiscal week.

[15] Crabtree, Jackson, Icenhower, Brashear, Homer Ellis, and Sturdevant.

[16] Brown, McMillen, Marks, A. L. Ellis, and Cardwell.

[17] The sheep season usually runs from the latter part of May until about the middle of July of each year.

McMillen, Marks, and A. L. Ellis had worked as extra employees on various occasions between the closing of the sheep house in 1936 and its opening in 1937, and McMillen worked more hours for the respondent than any of its other 23 extra employees during the period from January 1 to July 15, 1937. Although Brown was hired expressly for the 1937 sheep season, the respondent gave him irregular employment between July 20 and August 19, 1937.

On July 17, 1937, two representatives of the Amalgamated attended a meeting of the respondent's board of directors and requested the reinstatement of the discharged employees. On that occasion certain directors took the position that the employees had been laid off as a result of the closing of the sheep house, although they did not "fully understand" Carr's action and agreed to consider the request for reinstatement of these employees. Undoubtedly as a result of a decision of the directors on this occasion, Icenhower and Marks were given notice on July 19 to return to work that day [18] and Brown and McMillen were returned to work on July 20. A. L. Ellis had not been offered reinstatement.

In view of the foregoing facts, the circumstances of the other discharges on July 15, 1937, and the above-mentioned fact that Lewey Sturdevant was offered reinstatement promptly after the respondent learned that he had not joined the Amalgamated, it is clear that the reasons given by Carr for the discharge of Icenhower, Brown, Marks, A. L. Ellis, and McMillen are wholly specious. We find that the said employees were discharged because of their union activities.

The reasons given by the respondent for the discharge of Glen Jackson, Frank Brashear, and John C. Crabtree, regular employees from about 1929 until their discharge on July 15, 1937, are also contained in Carr's testimony. He testified that he had reprimanded Jackson two or three times for laziness, once during the sheep season of 1937, but he could not remember the date of this alleged incident. As to Brashear, he sought to justify the discharge on the ground that Breashear was supposed to work on Sundays from 3 to 11 p. m., but that it had been reported to him in the spring of 1937 that Breashear sometimes quit work at 9 or 10 p. m. The respondent's pay-roll records show that Breashear worked on alternate Sundays from January 1 to May 25, 1937, and did not work at all from the latter date until July 12, 1937. This break in Breashear's employment was occasioned by his illness. He returned to work on July 12, was discharged on July 15, and after his reinstatement on July 19 resumed his schedule of working on alternate Sundays. Further-

[18] Lewey Sturdevant, who was not named in the complaint, and R. H. Cardwell, as to whom the complaint was dismissed at the hearing, were also notified to return to work on July 19.

more, there is no evidence that these complaints, if any, were ever brought to Brashear's attention. Carr testified as to Crabtree that in March or April 1937 Crabtree had refused to obey an order given him by Burwell to do some feeding, but that he did not then make up his mind to discharge him. Carr also testified that, except for this incident, Crabtree's work had been satisfactory.

The reasons given for the discharge of Crabtree, Jackson, and Brashear are obviously rationalizations in the light of all the foregoing facts and the entire record. We agree with the Trial Examiner's finding that, "The reasons given by Carr for the lay-off of the 'regular' employees on July 15, 1937, less than 24 hours after their attendance at a union meeting, have a ring of insincerity that is very apparent from the mere reading of his testimony in connection therewith, and one who heard such testimony could have no doubt that a portion of it, at least, was a pure fabrication."

We find that on the basis of the foregoing facts and the entire record that John C. Crabtree, Frank Brashear, and Glen Jackson were discharged by the respondent because of their union activities.

John C. Crabtree, Glen Jackson, John Icenhower, and Frank Brashear were each earning as regular employees, working 5 and 6 days per week on alternate weeks, $18 per week at the time of their discharge on July 15, 1937. Each was reinstated by the respondent on July 19 and for the week ending July 22 was paid $12. Each of said employees sustained a loss of earnings in the sum of $6 as a result of his discriminatory discharge.

Arthur Brown was first employed by the respondent as an extra employee on June 4, 1937, and thereafter until his discharge on July 15, 1937, his earnings per week ranged from $2.67 to $9.35. From the date of his reinstatement on July 20, 1937, he worked irregularly until the week ending August 19, 1937. Since Brown was a high-school student, he was not recalled to work after August 19, 1937, until the opening of the 1938 sheep season. He was employed in the respondent's sheep house at the time of the hearing herein. In view of Brown's testimony that the job for which he had been hired was concluded with the closing of the sheep house on July 15, 1937, and all the surrounding circumstances, we conclude that Brown suffered no loss of earnings as a result of his discriminatory discharge.

J. F. McMillen had worked as an extra employee for about 2 years prior to his discharge and during the sheep season of 1937 worked almost as steadily as the regular employees. He was recalled to work on July 20, 1937, and continued to work as an extra for about 2 months when he quit to take a steady job with a commission company. Since McMillen's earnings for the period of his employment following his reinstatement were approximately the same as during

the same period in 1936 and since he testified that he does not know how much he would have earned from July 16 to 19, inclusive, had he not been discharged, we find that he suffered no loss of earnings as a result of his discriminatory discharge.

A. J. Marks had worked as an extra employee since the spring of 1935. After his discharge on July 15, 1937, he was recalled to work on July 19, 1937. The respondent's pay-roll records show that he did not work for the respondent from February 18, 1937, until May 24, 1937, and his earnings for the 2-month period following his discharge were in excess of his earnings during the same period of 1936. In view of these facts and his testimony that he lost no earnings as a result of his discharge, we find that Marks suffered no loss of earnings as a result of his discriminatory discharge.

A. L. Ellis had been employed very irregularly by the respondent for about 6 years prior to his discharge on July 15, 1937. During the 6-month period next preceding his discharge his earnings from the respondent aggregated $47.25. Following the close of the sheep season the previous year, he had earned from the respondent during the remainder of 1936 an aggregate of $38.95. He occasionally had other employment during the period he worked for the respondent, but his earnings from such other sources do not appear in the record. During the week of July 19, 1937, following his discharge, he appeared each day at the respondent's stockyard but was not offered work. Shortly thereafter he went to the State of Washington and earned $120 between August 18 and December 18, 1937. After returning to Springfield, Missouri, in January 1938, he worked, commencing March 10, 1938, on a farm near Springfield, earning $30 per month and board and room, and was there employed when he testified at the hearing on June 21, 1938. In view of the foregoing facts, we conclude that Ellis suffered no loss of earnings from July 15, 1937, to June 21, 1938, as a result of his discriminatory discharge.

*A. L. Jolliff* was first employed by the respondent on June 21, 1937, and worked as an extra employee until and including July 14, 1937, but has not been offered any employment by the respondent since the latter date. During said period he worked a part of 11 days, earning $18.75.

Jolliff did not attend the meeting of the Amalgamated on July 14, 1937, but went to the Amalgamated's offices on the morning of July 15 and made application for membership. He then went to the respondent's stockyard and reported for work. He testified as follows regarding a conversation which he claims to have had that day with Carr upon reaching the respondent's stockyard:

> . . . I met Mr. Carr on the dock. He said, "Jolliff, where were you this morning?" He said, "I wanted you to work." He said,

"Be here in the next [sic] morning." The next morning, if I remember right, was Friday morning. I said, "Well, I thought you canned me when you canned the rest of them." He said, "I didn't know you went over last night." And I said, "I didn't go last night, but went over this morning" . . .

On their face these remarks allegedly made by Jolliff and Carr seem incredible. Furthermore, there is a probable discrepancy in Jolliff's testimony in that he apparently arrived at the stockyard before the employees were discharged, as the discharges, except for Peeler's, did not occur until about 4 o'clock in the afternoon. Jolliff fixed no time for this conversation, but there is an inference in his testimony that he arrived at the stockyard in the early afternoon of July 15 and talked with Carr immediately upon his arrival. Carr also denied having had this conversation and there is no other evidence that the respondent knew of Jolliff's union activities. Moreover, Jolliff was not given either written or oral notice of termination of his employment, as in the case of all the other employees discharged on July 15, 1937.

In view of the foregoing facts and circumstances and also the absence of any evidence that Jolliff was given employment as an extra employee except for the duration of the 1937 sheep season, we agree with the recommendation of the Trial Examiner that the complaint, in so far as it concerns A. L. Jolliff, should be dismissed.

We find that the respondent has discriminated in regard to hire and tenure of employment of William Peeler, Arthur Brown, John Icenhower, J. F. McMillen, Glen Jackson, John C. Crabtree, Frank Brashear, A. J. Marks, and A. L. Ellis, thereby discouraging membership in the Amalgamated, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We affirm the rulings of the Trial Examiner in dismissing the complaint in so far as it alleged unfair labor practices with regard to R. H. Cardwell and Homer Ellis.

### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce, among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since William Peeler and A. L. Ellis were discharged as the result of the respondent's unfair labor practices and both desire reinstatement to their former status of employment with the respondent, we shall order their reinstatement to their former or substantially equivalent positions with back pay in the amount they have suffered by reason of their discharge by payment to each of them of a sum equal to the amount which he normally would have earned as wages, in the case of Peeler, during the period from the date of his discharge to the date of the offer of reinstatement, and, in the case of Ellis, during the period from June 21, 1938, until the date of the offer of reinstatement, less his net earnings [19] during said period.

John C. Crabtree, Glen Jackson, John Icenhower, and Frank Brashear were discharged on July 15, 1937, as a result of unfair labor practices, but were reinstated on July 19, 1937. We shall order the payment of back pay to each in the sum of $6, that being the amount which each normally would have earned during the period between the date of his discharge and the date of his reinstatement.

We have also found that Arthur Brown, John Icenhower, J. F. McMillen, Glen Jackson, John C. Crabtree, Frank Brashear, and A. J. Marks were discriminatorily discharged. Since these employees were reinstated by the respondent and suffered no loss of earnings as a result of their discharge, it is unnecessary to order any remedy for them.

The complaint in so far as it alleges unfair labor practices with regard to A. L. Jolliff, R. H. Cardwell, and Homer Ellis will be dismissed.

Upon the basis of the foregoing findings of fact and the entire record in this proceeding, the Board makes the following.

CONCLUSIONS OF LAW

1. Amalgamated Meat Cutters and Butcher Workers of North America, Local No. 536, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

[19] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects.

2. The respondent, by discriminating in regard to the hire and tenure of employment of William Peeler, A. L. Ellis, Arthur Brown, John Icenhower, J. F. McMillen, Glen Jackson, John C. Crabtree, Frank Brashear, and A. J. Marks, thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act with respect to the discharge of A. L. Jolliff.

## ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Union Stock Yards Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Amalgamated Meat Cutters and Butcher Workers of North America, Local No. 536, affiliated with the American Federation of Labor, or any other labor organization of its employees by discriminatorily discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire or tenure of employment because of their membership in or activity in behalf of any such labor organization;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to William Peeler and A. L. Ellis immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed;

(b) Make whole William Peeler and A. L. Ellis for any loss of pay they have suffered by reason of their discharge by payment to each of them a sum equal to the amount which he normally would have earned as wages, in the case of Peeler, during the period from the date of his discharge to the date of the offer of reinstatement, and, in the case of Ellis, during the period from June 21, 1938, until the date of the offer of reinstatement, less net earnings [20] of each during said periods; provided, that the respondent shall deduct from the back pay due each employee a sum equal to that received by such employee for work performed upon Federal, State, county, municipal, or other work-relief projects during the period for which back pay is due him under this Order, and shall pay any such amount deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(c) Pay to John C. Crabtree, Glen Jackson, John Icenhower, and Frank Brashear each the sum of $6, that being the amount of wages which each normally would have earned during the period between the date of his discharge on July 15, 1937, and the date of his reinstatement on July 19, 1937;

(d) Immediately post notices in conspicuous places throughout its stockyard, including among such places all bulletin boards commonly used by the respondent for announcements to its employees, stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b) and that it will take the affirmative action set forth in 2 (a), (b), and (c) of this Order, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting;

(e) Notify the Regional Director for the Seventeenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed in so far as it alleges that the respondent has engaged in unfair labor practices with regard to A. L. Jolliff, R. H. Cardwell, and Homer Ellis, within the meaning of Section 8 (3) of the Act.

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[20] See footnote 19 above.